

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Zachery Broadcasting Company)	File Number EB-01-AT-0040
)	
Radio Station WDWZ(AM))	NAL/Acct. No. 20013248-0001
West Point, GA)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: April 16, 2001

By the Enforcement Bureau, Atlanta Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Zachery Broadcasting Company ("Zachery"), licensee of AM broadcast station WDWZ(AM), has apparently violated sections 11.35(a), 73.3526, 17.50, 17.56, 17.48, 17.49, 17.4(a), and 73.49 of the Commission's Rules¹. Specifically, Zachery failed to maintain emergency alert system ("EAS") equipment, failed to maintain a public inspection file, failed to maintain the painting and lighting of the station's antenna structure, failed to report and record the outage of the station's antenna structure lights, failed to register the station's antenna structure and failed to enclose the tower within an effective locked fence or other enclosure. We conclude that Zachery is apparently liable for a forfeiture in the amount of twenty four thousand dollars (\$24,000).

II. BACKGROUND

2. On January 30, 2001, agents from the Commission's Atlanta Office inspected broadcast station WDWZ(AM) and found numerous violations. On February 14, 2001, the Atlanta Office issued a Notice of Violation ("NOV") to Zachery for violations found during the inspection. On March 1, 2001, the Atlanta Office received a written response to the NOV. The response did not adequately or clearly address all violations cited in the NOV. On March 15, 2001, The Atlanta office issued a continuation to the NOV

¹ 47 C.F.R §§ 11.35(a), 73.3526, 17.50, 17.56, 17.48, 17.49, 17.4(a), and 73.49.

(“Continuation Notice”) requesting a more thorough and detailed response from the licensee. On April 6, 2001, the Atlanta Office received another written response. Again, the response did not adequately or clearly address all violations cited in the NOV.

3. The NOV cited numerous violations. Of particular importance were those violations pertaining to the EAS equipment, public inspection file and antenna structure (“tower”) of radio station WDWZ(AM).

III. DISCUSSION

4. Section 11.35(a) of the Commission’s Rules² requires that broadcast stations have EAS equipment installed and operational at all times the station is in operation. Radio station WDWZ(AM) had no EAS equipment installed at the station. Furthermore, there were no EAS logs to indicate that the station had ever had EAS equipment. Zachery’s initial response to the NOV indicated that EAS equipment with the name “Hollybur” had been ordered. The response did not offer any further explanation for the absence of EAS equipment on the day of inspection. The Continuation Notice requested further explanation regarding the station’s compliance with the EAS rules as well as clarification of the make and model of the ordered EAS equipment. Zachery failed to address the EAS violation in the subsequent response letter to the Atlanta Office.

5. Section 73.3526 of the Commission’s Rules³ requires that commercial broadcast stations maintain a public inspection file at the main studio. The file must be made available during normal business hours. There was no public inspection file at the main studio. Furthermore, Mr. Willie Zachery, who identified himself as the owner and chief operator of the station, failed to provide proof that the public inspection file existed. Zachery’s initial response to the NOV simply stated that the station now had a public inspection file. No further explanation was given for the absence of the file on the day of inspection. The Continuation Notice requested further explanation regarding the station’s compliance with the public inspection file rules as well as a listing of the documents filed in the public inspection file. Zachery failed to address the public inspection file violation in the subsequent response letter.

6. Sections 17.50, 17.56, 17.48, 17.49 and 17.4(a) of the Commission’s Rules⁴ pertain to the licensee’s responsibilities relating to maintenance of obstruction marking and lighting as well as other tower related responsibilities. Section 17.50 requires that licensees clean and repaint towers as often as necessary to maintain good visibility. The paint on the tower was faded and flaking, hindering the tower’s visibility. Section 17.56 requires that licensees repair tower lighting as soon as practicable. At the time of inspection, the lights on the station’s tower were all extinguished with the wires feeding the tower’s lights completely severed. During the inspection Mr. Zachery stated that the lights were extinguished because when lit, they caused electrical noise to the station’s signal. He further stated that the lights had been extinguished for several weeks. Sections 17.48 and 17.49 require that licensee’s notify the Federal Aviation Administration (“FAA”) of any tower lighting outage and that licensee’s

² 47 C.F.R. § 11.35(a).

³ 47 C.F.R. § 73.3526.

⁴ 47 C.F.R. §§ 17.50, 17.56, 17.48, 17.49 and 17.4(a).

maintain specific records pertaining to tower lighting outages. The FAA was not notified of the lighting outage and no logs were maintained regarding the lighting outage. Section 17.4(a) requires that owners of towers with required painting and lighting register the tower with the Commission. The tower was not registered with the Commission. Zachery's initial written response to the NOV simply stated that the licensee was "work[ing] on the...FAA ...tower lighting and paint[ing]." No further explanation was provided. The Continuation Notice requested further information regarding all of the tower violations. Zachery's response to the Continuation Notice stated that the tower lighting outage was reported to the FAA on April 2, 2001 and that the tower registration number ("7A304032") was placed on the tower. However, the provided registration number is invalid and there is no record that the tower is registered. Zachery did not address any of the other tower violations.

7. Section 73.49 of the Commission's Rules⁵ requires that licensees enclose any AM tower with radio frequency potential at the base within an effective locked fence or other enclosure. The gate for the fence surrounding the base of the tower was removed, leaving an opened doorway with unrestricted access to the tower. Zachery's initial response indicated that the gate had been reinstalled. Zachery included a photograph of the reinstalled gate as evidence. However, the photograph also demonstrated that the fence was still not effectively locked. The Continuation Notice requested that Zachery respond further to the tower fencing violation. Zachery's response to the Continuation Notice included another photograph demonstrating that the gate had finally been secured with a lock and chain. It is apparent from this evidence that the station continued to be in violation for at least two months after the inspection date.

8. As a Commission licensee, Zachery is responsible for knowledge of and compliance with the Commission's Rules. Zachery's responses to the Notices have been deficient in substance and in some cases have failed to address the violations. Based on the evidence before us, we find that Zachery Broadcasting Company willfully⁶ violated Sections 11.35(a), 73.3526, 17.50, 17.56, 17.48, 17.49, 17.4(a) and 73.49 of the Commission's Rules.⁷ Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"), the base forfeiture amount for failure to maintain EAS equipment [§ 11.35(a)] is \$8,000, the base forfeiture amount for failure to maintain a public inspection file [§73.3526] is \$10,000, the base forfeiture amount for failure to maintain the antenna structure painting and lighting [§§17.50 and 17.56] is \$10,000, the base forfeiture amount for failure to notify the FAA and record the tower lighting outage [§§17.48 and 17.49] is \$1,000, the base forfeiture amount for failure to register the antenna structure [§17.4(a)] is \$3,000 and the base forfeiture amount for failure to enclose the tower within an effective locked fence or other enclosure [§73.49] is \$7,000. The aggregate amount for these forfeitures is \$39,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934

⁵ 47 C.F.R. § 73.49.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act. . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ 47 C.F.R. §§ 11.35(a), 73.3526, 17.50, 17.56, 17.48, 17.4(a) and 73.49.

("Act"), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Taking these factors into account we believe that because the station is licensed to a relatively small market and because the station has no prior history of offenses, the forfeiture amount should be reduced to \$24,000. After applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we believe a \$24,000 forfeiture is warranted.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended⁹, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules¹⁰, Zachery Broadcasting Company is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty four thousand dollars (\$24,000) for violating sections 11.35(a), 73.3526, 17.50, 17.56, 17.48, 17.4(a) and 73.49 of the Commission's Rules¹¹ for failure to maintain EAS equipment, failure to maintain a public inspection file, failure to maintain the lighting and painting of the station's antenna tower, failure to notify the FAA and record the tower lighting outage, failure to register the tower and failure to enclose the tower within an effective locked fence or other enclosure.

10. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹², within thirty days of the released date of this NOTICE OF APPARENT LIABILITY, Zachery Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 20013248-0001.

12. The response if any must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No. 20013248-0001 and must include the NAL/Acct. No. 20013248-0001.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

⁸ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹ 47 C.F.R §§ 11.35(a), 73.3526, 17.50, 17.56, 17.48, 17.49, 17.4(a), and 73.49.

¹² 47 C.F.R. § 1.80.

financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹³

15. **IT IS FURTHER ORDERED THAT** a copy of this **NOTICE OF APPARENT LIABILITY** shall be sent by Certified Mail Return Receipt Requested to 602 N. Cherry Drive, Lanett, AL 36863¹⁴.

FEDERAL COMMUNICATIONS COMMISSION

Fred L. Broce
District Director

cc: Willie Zachery, 1039 44th Avenue, Lanett, AL 36863
Radio Station WDWZ(AM), P.O. Box 873, Lanett, AL 36863

¹³ See 47 C.F.R. § 1.1914.

¹⁴ As requested by the licensee, a courtesy copy will be sent to two other addresses: Radio Station WDWZ(AM) P.O. Box 873, Lanett, AL 36863 and Willie Zachery, 1039 44th Avenue, Lanett, AL 36863.